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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/299,309	04/26/1999	GLEN R. WALTERS	BC9-98-105	3115

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FLEIT, KAIN, GIBBONS,
GUTMAN & BONGINI, P.L.
ONE BOCA COMMERCE CENTER
551 NORTHWEST 77TH STREET, SUITE 111
BOCA RATON, FL 33487

EXAMINER

FERRIS, DERRICK W

ART UNIT

PAPER NUMBER

2663

DATE MAILED: 01/30/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/299,309

Applicant(s)

WALTERS ET AL. 

Examiner

Derrick W. Ferris

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 November 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 April 1999 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. **Claims 1-24** as amended are still in consideration for this application.
2. As to the 112-second paragraph rejection for Office Action dated 7/3/02 (in reference to line item 1), examiner withdraws this rejection. Examiner thanks applicant for making the necessary corrections for claims 4 and 10 as well as pointing out the article reference for “the second data” with respect to claim 6. Examiner also thanks applicant for noting that a 112-second paragraph rejection is improper for claims 1, 9, 15, and 20. However, examiner would also like to point out that the examiner is also allowed to make a reasonable but broad interpretation of the claimed subject matter (especially with respect to the modified obviousness rejection below).
3. Examiner withdraws the obviousness rejection as being unpatentable over *admitted prior art* in view of *SHUNRA* for Office Action dated 7/3/02 (in reference to line item 3). Examiner does not agree with applicant’s arguments, however, concedes that an obviousness rejection may be improper due to applicant’s admissions and has thus withdrawn the rejection.
4. Examiner withdraws the obviousness rejection as being unpatentable over *Carson1* in view of *Carson2* for Office Action dated 7/3/02 (in reference to line item 4). Examiner notes that the references as taught in combination do not teach a first and second predetermined speed in the same direction as amended in the claims by the applicant. Examiner notes that applicant has amended claims 1-14, in order to clarify this point and overcome the prior art rejection. A new rejection has been made as a result of applicant’s modification to the claims as necessitated by amendment.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-24 as amended are rejected under 35 U.S.C. 103(a) as being unpatentable over “A teletraffic analysis of dial-up connections over PSTN” by Garroppo et al. (“*Garroppo*”).

As to **claims 1, 9, 15, and 20**, applicant very broadly claims a method of simulating a “low-bandwidth” connection over a “high-bandwidth” connection using a “speed control layer”. *Garroppo* discloses in figure 1 a schematic of a system analyzed for the purpose of determining modem connectivity in general as illustrated in figure 2. Specifically, figure 1 shows the network architecture of a high-speed connection from the speed control layer (i.e., combination of access server and dial up router or proxy server as is known in the art using a reasonable but broad interpretation) to the Internet over a 64 Kbps connection that is going to be upgraded to 128 Kbps (i.e., a first speed) and a lower speed connection (i.e., a second speed) to an end user or client. Noted on the user or client side (i.e., the low speed connection) is a lower speed connection of either 28.8 Kbps or 33.6 Kbps (i.e., a second speed) that is auto-answering (i.e., the speed of a modem can vary) by using analog modems.

What may not be clearly disclosed in the reference is simulating the lower speed connection (i.e., a second speed) over a high-bandwidth connection since a high-

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bandwidth connection is relative. Examiner notes that simulating a lower speed connection over a high bandwidth connection would have been obvious to a skilled artisan prior to applicant's invention given a reasonable but broad interpretation of the claimed subject matter and the teachings provided in the reference. More specifically, *Garroppo* discloses an analog modem connection as is well known in the art that operates at various lower speeds (e.g., 28.8 Kbps or 33.6 Kbps) than the high speed connection between the speed control layer (i.e., the access server and dial up router) and the Internet from the ISP. Given a reasonable but broad interpretation of the claimed subject matter, a lower speed could be defined as 28.8 Kbps which travels over an analog modem connection. This analog modem connection between the end user or modem and the speed control layer (i.e., access server and dial up router) is capable of infinite bandwidth (i.e., the speed of the link is limited by the technology of the modem such as possibly a high speed cable modem) such that a high bandwidth connection is relative. Emphasis is placed on the teachings of the reference which shows that upgrading the technology allows for a higher speed connection (and thus a high bandwidth connection) such as taught when upgrading the link speed from 28.8 Kbps to 33.6 Kbps. Thus the reference provides a low speed connection for simulating an end user's response to an Internet connection (through the ISP) where the response of an Internet connection is determined by the lowest speed connection which is the lower speed link between the modem or end user and the access server. Adjusting the speed of the lower speed link as taught by the reference (e.g., 28.8 kbps to 33.6 kbps) will simulate various lower speed connections for an end user over a high bandwidth connection.

As the reference in general discloses network connections, and more specifically analysis of dial-up connections such as modem rates, also disclosed by applicant [e.g., see applicant's specification on page 1, line 22], examiner notes a strong motivation to apply the subject matter as a whole for the reference.

As to **claim 2**, shown in the reference is transporting the information over the Internet which could be considered a high-bandwidth LAN to someone skilled in the art.

As to **claim 3**, a skilled artisan would recognize that 28.8 and 33.6 kbps are modem speeds.

As to **claims 4 and 10**, examiner notes the second predetermined speed could be setup before the limiting step using the auto answering as disclosed in the reference.

As to **claims 5 and 11**, as the access server and modems are capable of auto-answering, examiner also notes a possibility of a forth speed as well which is less than the first speed and less than the third speed of a high-bandwidth connection.

As to **claims 6-8,12-14,17-19 and 22-24**, shown in the figure is more than one client connection such that there could be both a second and third device. Hence the properties of a client device in general could apply to a second or third device such that the same reasoning as mentioned in the rejection for claim 1 also applies.

As to **claims 16 and 21**, examiner notes a reasonable but broad interpretation of an interface in general that is used to set the second predetermined speed by using auto-answering.

Conclusion

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Derrick W. Ferris whose telephone number is (703) 305-4225. The examiner can normally be reached on M-F 9 A.M. - 4:30 P.M. E.S.T.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chau Nguyen can be reached on (703) 308-5340. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9314 for regular communications and (703) 872-9314 for After Final communications.


Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 305-3900.

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Derrick W. Ferris
Examiner
Art Unit 2663

DWF 
January 26, 2003


MELVIN MARCELO
PRIMARY EXAMINER